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Supreme Court of the United States

OCTOBER TERM, 1944

No. 315.

W. C. LAYCOCK, *et al.*, PETITIONERS,

versus

HIDALGO COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NO. 12, *et al.*
RESPONDENTS.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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I.

OPINIONS OF THE COURTS BELOW.

The opinion of the Circuit Court of Appeals for the Fifth Circuit is reported in 142 Fed. (2d) 789. The findings and conclusions of the Trial Court are in the Record at pages 135-140.

II.

JURISDICTION.

The petition for writ of certiorari does not contain a statement particularly disclosing the basis upon which it is contended the Court has jurisdiction. It merely refers to the date of the judgment of the Circuit Court of Appeals and the statute and court rule with reference to the time for filing a petition for writ of certiorari. This statement does not constitute compliance with Rule 38, Paragraph 2, and Rule 12, Paragraph 1, of the Revised Rules of the Supreme Court.

The District Court and Circuit Court of Appeals had jurisdiction only by virtue of diversity of citizenship, and no constitutional question or question arising under Federal law is involved. The Petitioners seek a review of matters arising on questions of fact determined against the Petitioners under the constitution and decisions of the State of Texas relating to water control and improvement districts organized as governmental agencies and municipal subdivisions of the State.

The writ should be denied under the authority of *United States vs. Rimer*, 220 U. S. 547, and *Southern Power Co. vs. Notrh Carolina Public Service Co.*, 263 U. S. 508.

The writ should be denied for the further reason that it does not join a necessary party, the State of Texas, on whose petition in intervention the judgment complained of was in part granted.

III.

STATEMENT OF THE ISSUES

The Petitioners present four points or specifications of error raising issues as follows:

A. Petitioners contend (Point 1) that, assuming that the courts below were correct in refusing to enforce the judgment, they erred in granting and sustaining the injunctive relief "in the absence of a successful direct attack," although both the Water District and the State of Texas sought by cross-action direct equitable relief against the judgment which was granted by the Trial Court and sustained by the Circuit Court.

B. Petitioners contend (Point 2) that the Trial Court having upheld the validity of its former judgment in the law action, it could not refuse to enforce it. This contention is made by Petitioners in the face of the fact that the Trial Court on direct attack enjoined the enforcement of the judgment on equitable grounds supported by evidence that the same was groundless and secured by fraud on the jurisdiction of the Court.

C. Petitioners contend (Point 3) that the remedy of mandamus is the sole remedy for the enforcement of a judgment against a public corporation and that the Court erred in refusing the mandamus in this case, although the record shows that the mandamus sought was to virtually set up the defunct Water District as an operating public agency in order to collect an alleged judgment based on fraudulent and void obligations.

D. Petitioners contend (Point 4) that the case of *Brownsville vs. Logue*, 129 U. S. 493, is in applicable because the alleged interim bonds upon which Petitioners' rights are based were merely voidable and not void, although the record shows that said interim bonds had been

specifically held void by the appellate courts of Texas because the same were not voted as required by the Constitution of Texas.

IV.

ARGUMENT AND AUTHORITIES.

A.

Respondent Water District and the State of Texas were Successful in Direct Attack against the Judgment.

Petitioners' first point concedes the correctness of the action of the courts below in refusing to enforce the judgment but attacks the action of the court granting injunctive relief "in the absence of a successful direct attack." This point is highly technical and founded upon the sole premise that there was not "a successful direct attack" on the alleged judgment. This is a false premise.

In its answer, the Water District brought a direct attack upon the judgment based upon equitable grounds alleged in the answer. (R. 39-64). This cross-action was filed within the four year limitation period prescribed by statute. Likewise, the State of Texas in its petition in intervention brought a direct attack upon the judgment asking that the same be declared a nullity and seeking equitable relief against it. (R. 118-128). On evidence found adequate by the Trial Court and the Circuit Court of Appeals, the Trial Court granted equitable relief against the judgment as follows:

> "It is further ordered, adjudged and decreed by the Court that the enforcement for and in behalf of the plaintiffs of the judgment of this Court heretofore entered in Cause No. 891 at Law, styled W. L. Shumate, Jr. vs. Hidalgo County Water Control and Improvement District Number 12, et al., be and the same is hereby denied, and the plaintiffs in their

> several capacities aforesaid are hereby denied any relief by virtue of their ownership of such judgment. The plaintiffs and each of them in their several capacities are hereby permanently enjoined from asserting any further claims under and by virtue of said judgment in Cause No. 891 Law, and are permanently enjoined from transferring, selling and assigning said judgment or any part thereof." (R. 142).

The above injunction granted by the Trial Court against the enforcement of the Shumate judgment is a form of equitable relief commonly granted by courts of equity to relieve judgment debtors against judgments which, on equitable principles, should not be enforced.

If there be a good defense, and the party does not avail himself of it in the suit at law by reason of fraud or accident or mistake or other reasons appealing to conscience, a Court of Equity will relieve against the judgment at law. The rule is well expressed by Chief Justice Marshall in *Insurance Company vs. Hodgson*, 7 Cranch, 336, where he states:

> "Without attempting to draw any precise line to which equity will advance, and which they cannot pass, in restraining parties from availing themselves of judgments obtained at law, it may safely be said, that any fact which clearly proves it to be against conscience to execute a judgment * * * will justify an application to a court of chancery."

The fact that the judgment is based on void and fraudulently procured interest coupons and that the judgment was procured in a case in which a fraud was perpetrated on the jurisdiction of the court certainly justifies equitable relief.

B.

Trial Court Correctly Granted Equitable Relief Against Judgment Whether Judgment was Void or Merely Voidable in Equity.

Petitioners under their second point attempt to capitalize on the Trial Court's finding that the Court at the time of entering the alleged judgment had the parties properly before it and had jurisdiction of the case. Taking this as their premise, Petitioners contend that the Court had no authority to enjoin the enforcement or transfer of the judgment on equitable grounds.

This contention is based upon the fallacious assumption that equitable relief may be granted only against judgments which are *void* because the Court had no jurisdiction over the parties or the subject matter. This assumption is not supported by the authorities. If a judgment is *void* on its face, no equitable relief is ordinarily necessary.

Courts of equity grant equitable relief by injunction according to no hard and fast rules. Equities are as varied as the fact situation upon which they are based. Judgments have been set aside on the mere ground of mistake with reference to matters of fact entering into the judgment as in the case of *Bankers Trust Company vs. Hale & Kilburn Corp.*, 84 Fed. (2d) 401, where the Court said:

> "But it is to be observed that the judgment was the result of a mutual mistake of fact, namely, the supposition that these $66,400 of notes were the original notes on which Body Company was liable as guarantor when in fact they were obligations solely from Body Corporation to Hale & Kilburn. Obviously, neither the plaintiff trustee nor Body Company knew this latter fact, but, in reliance on the note registry, both acted upon the mistaken fact as did the court in awarding the default judgment.

> Equity would not permit a judgment based on such a mistake to be enforced so as to work injustice to the judgment debtor * * *. Thus Body Company could have enjoined collection of the judgment so far as it represented the $66,400, and this relief should be equally available to Body Company's shareholder-distributees."

Courts of equity have granted relief against judgments on the mere ground that the case was taken up and tried without the knowledge of the defendant's attorney after appearance had been entered in the case. Such a case is *Metcalf vs. Williams*, 104 U. S. 93, 26 L. Ed. 665. In that case, the Court said:

> "When a party has been deprived of his right by fraud, accident or mistake, and has no remedy at law, a court of equity will grant relief. Perhaps, in view of the equitable control over their own judgments which courts of law have assumed in modern times, the judgment might have been set aside, on motion, for the cause set forth in the bill; but if this were true, the remedy in equity would still be open; and the fact that the court declined to exercise the power upon motion, rendered the resort to a bill necessary and proper * * *. Courts of equity, however, still entertain bills to set aside judgments obtained by fraud, accident or mistake."

The facts of this case are bound to appeal strongly to a court of equity and to cause the court to require strict complience with all of the rules and particularly the rules with reference to fraud and mistake.

The Shumate judgment sought to be enforced by Petitioners is based on interest coupons clipped from bonds which were adjudicated to be void and ordered surrendered and cancelled in the case of *State of Texas vs. Sam L. Miller*,

155 S. W. (2d) 1012, and *State ex rel. Abney vs. Miller*, 133 Tex. 498, 128 S. W. (2d) 1134. W. C. Laycock and J. D. Norwood, the Petitioners in this case, were parties defendant in that suit and, as shown by the record, appeared by counsel and defended the case.

The alleged judgment sued on in this case was taken in the name of one W. L. Shumate, a citizen of Alabama. The Trial Court had jurisdiction of the case only if actual diversity of citizenship existed between the true parties at interest.

The record in the case shows that W. L. Shumate had no interest in the coupons sued on or the bonds from which they were taken (R. 497), but the same were the joint property of Shannon Newman and Vance Raimond, of Hidalgo County, Texas, and Petitioners W. C. Laycock, of Ohio, and J. D. Norwood, of Tennessee, in pursuance of a written joint adventure agreement (R. 443). The bonds from which the coupons were clipped were purchased in pursuance of the joint adventure agreement which defined the activities of the parties as follows:

> "That they shall undertake, as a joint adventure, the purchase, assembly, refunding, and collection of the bonds of the said Hidalgo County Water Control and Improvement District No. 12." (R. 443).

The joint venture agreement further provided that Newman and Raimond shall "employ such attorneys, satisfactory to the said J. D. Norwood, as may be needed to bring all necessary suits on matured principal and interest of said bonds." (R. 443). The record therefore shows that the suit in the name of W. L. Shumate was brought by Shannon Newman's attorney at her instance in the performance of and as a part of the joint venture activities. (R. 435).

Under these facts, it is clearly the law that all of the

joint adventures were necessary parties to a suit brought on interest coupons in pursuance of and in the carrying out of the joint adventure agreement, just as all partners are necessary parties to a suit brought in pursuance of partnership affairs. *In re McConnell*, 197 Fed. 438; *Crosby vs. Cotton*, 24 S. W. 343; *Bernitt, et al. vs. Smith-Powers Logging Co.*, 184 Fed. 139.

In the last cited case (184 Fed. 139), the Court said:

> "The case, therefore, is one where two out of three joint owners are suing a third party for a debt due the partnership or joint enterprise * * *. A defendant is entitled to have the entire claim prosecuted against him, or none, unless relinquished in part, and *one or more members of a copartnership, less than the whole, cannot proceed to recover their undivided interest in a debt against any debtor of the firm This is so elementary that it needs no authorities to sustain it. The demurrer must therefore be sustained.*"

The bringing of the suit was one of the agreed activities for which the joint adventure was formed and all of the parties to the joint adventure agreement were therefore necessary parties plaintiff. Being necessary plaintiffs, there was no complete diversity of citizenship which is necessary to confer jurisdiction on the Federal Court and the bringing of the suit in the name of W. L. Shumate, a nonresident of Texas, constituted a fraud on the jurisdiction of the Court without reference to what the intention of the parties in the matter might be.

The exact question was decided in *Broadis vs. Broadis*, 86 Fed. 951, in which the Court set aside a judgment procured against a resident of the State of California on the representation that she was an alien. In deciding the case, the Court said:

> "This court was therefore misled and imposed upon in that case, when it took jurisdiction on the ground of the alienage of the defendant Ellen Maria Broadis. It does not appear from the evidence that there was any actual collusion and fraud practiced upon the court. It seems that the complainant acted upon the advice of counsel in bringing his suit in this court, and in setting up the alienage of the defendant. But it is immaterial how the court was imposed upon, whether purposely or willfully, or through inadvertence and mistake. Suffice it is to say that it now affirmatively appears in this case that the court took jurisdiction of that case when it had no power to do so. The court, therefore, never had valid jurisdiction of the case, and its proceedings were and are wholly null and void * * *."

We also call the Court's attention to the cases of *Williams vs. Nottawa*, 104 U. S. 209; *Kreider vs. Cole*, 149 Fed. 647; *Town of Lantana vs. Hopper*, 102 Fed. (2d) 118, and *Phoenix Mutual Life Ins. Co. vs. England, et al.*, 22 Fed. Sup. 284.

We respectfully submit that since on the true facts the District Court had no jurisdiction in the Shumate case and since the plaintiff actually had no cause of action on the void interest coupons, that it is well within the equitable jurisdiction of the District Court to enjoin the enforcement of the judgment.

C.

Judgment Sued on by Petitioners Not Res Judicata of Right to Mandamus Prayed for by Petitioners.

The mandamus sought by Petitioners and denied by the lower courts was not merely a mandamus to levy and collect a tax and to apply the same upon the alleged judgment, but sought to vitalize the defunct Water District

which had never functioned or existed in fact and to turn it into an operating district for the sole purpose of collecting a fraudulent judgment based upon coupons clipped from void bonds for which no consideration whatsoever had been received by the District.

Petitioners prayed that the officers of the Water District be ordered by writ of mandamus:

> (a) "To forthwith appoint a qualified person to serve as tax assessor and collector 'for the District and' to appoint such deputies to assist such assessor and collector as shall be sufficient to do and perform the duties required," etc.
>
> (b) "To forthwith appoint three qualified persons as members of a board of equalization," etc.
>
> (c) "To forthwith employ a competent and qualified practicing attorney at law to do and perform all duties imposed by the laws of the State of Texas," etc.
>
> (d) " 'To forthwith select a depository' and to require an approved bond thereof."
>
> (e) " 'To forthwith deposit in said depository after the selection thereof' certain construction bonds."
>
> (f) "To instruct the tax assessor and collector * * * to promptly prepare assessments of real and personal property subject to taxation within said District, curing the respective years 1931, 1932, 1933, 1934, 1935, 1936 and 1937."
>
> (g) "To instruct said tax collector and assessor to promptly tender such assessments to the board of equalization," etc.
>
> (h) "To instruct said tax collector to receive back from the equalization board when it has performed its duties * * * such assessments and rolls, and proceed forthwith to compile delinquent tax records," etc.

(i) "To instruct said tax collector to prepare said compiled delinquent tax records and to extend thereon after each of such years the amount of taxes, interest, penalities," etc.

(j) "To cause said compiled delinquent tax records * * * to be submitted to the board of equalization for examination and apporval," etc.

(k) "To cause the tax assessor and collector of said district * * * to prepare in duplicate * * * tax rolls for said District for the years 1931-1937, inclusive," etc.

(l) " 'To require said tax assessor and collector to promptly make demand, in due form and manner' for the payment of all taxes and penalties."

(m) "To collect the taxes, current and delinquent," etc.

(n) " 'To pay out and turn over' to Respondents the money collected."

(o) "To cause said board of equalization, when appointed, to receive all assessment lists * * * and complete its regular duties with dispatch."

(p) "To cause said board of equalization to value each tract of land and parcel of real estate and other property," etc.

(q) " 'To cause said board of equalization * * * to promptly return' the tax rolls to the tax collector."

(r) "To cause the secretary of the board of directors of said district to serve as secretary of the board of equalization," etc.

(s) "To cause the secretary of said board of directors to fully perform and discharge with dispatch * * * all of the duties incumbent upon him."

(t) " 'To establish and maintain a legal office for conduct of the district's business and furnish such office and each officer of said District with all necessary equipment, plans, receipts and supplies

necessary to the performance of his duties * * * and that said board of directors be required to keep a true and full written account of all of their minutes and proceedings' and to preserve the same 'in a fireproof vault or safe'."

(u) " 'To order and command said board of directors to promptly determine, fix and enter of record, in due time, form and manner, a rate of ad valorem taxes for such construction bonds of said district' for the years 1931, 1932, 1933, 1934, 1935, 1936 and 1937."

(v) "To appropriate the proceeds of such taxes to the credit of the 'interest and sinking fund account' for said interim bonds," etc.

(w) "To pay all such funds collected and deposited in said 'interest and sinking fund account' to plaintiffs."

(x) "To continue the tax assessing, rate fixing, collecting and active management of said district," etc. (R. 29-35).

From the above, it is apparent that the mandamus here sought is not merely a mandamus for the enforcement of a judgment but, as stated above, is a mandamus to resurrect the District in order to attempt to impose upon it a groundless obligation.

We respectfully submit that the opinion of the Circuit Court of Appeals was correct in stating that the mandamus sought was not one "to perform the ministerial duties of levying taxes to pay a debt, but is one setting out and relying on the statute upon the authority of which it is claimed the bonds issued," and seeking to require "a person to do what the law prohibits him to do," that is, levy a tax on

property owners in a political subdivision to pay a debt which the District does not owe.

We also call attention to the fact that in the original case in which the alleged judgment was entered, plaintiff sought a mandamus for the collection of the judgment (R. 155) but no such relief was granted in the judgment (R. 37-38) and therefore by operation of law such relief was denied. It is difficult to see how the judgment could adjudicate the right to relief by mandamus which, though prayed for in the case, was not granted.

D.

Rule Announced in Brownsville vs. Logue 129 U. S. 493, Properly Followed and Applied.

Petitioners under their fourth point contend that the case of *Brownsville vs. Logue*, 129 U. S. 493, is inapplicable in the instant case because the bonds upon which the alleged judgment is based are not void under the decisions of the State of Texas.

The Trial Court and the Circuit Court of Appeals correctly followed and applied the decisions of the State Court in *State vs. Miller*, 133 Tex. 498, and *Miller vs. State*, 155 S. W. (2d) 1012 (error refused), which specifically held that the interim bonds and coupons upon which the instant judgment was based were void because not supported by a vote of the property owners of the District as required by the State Constitution. After stating the constitutional basis for its holding, the Texas Court said:

"For the reasons above indicated, we do not think the interim bonds as issued ever had any potential vitality, either in whole or in part, for any purpose whatsoever."

Petitioners in this case seek to have a tax levied to pay the interest on these void bonds.

As stated in the opinion in *Brownsville vs. Logue*, supra:

"The power invoked is not the power to tax to pay judgments, but the power to tax to pay bonds, considered as distinct and independent, and therefore, when the relator is obliged to go behind his judgments as money judgments merely, to obtain the remedy pertaining to the bonds, the Court cannot decline to take cognizance of the fact that the bonds are utterly void and that no such remedy exists." (129 U. S., at page 505).

* * * * * *

"Res judicata may render straight that which is crooked, and lack that which is white, facit ex curvo rectum, ex albo nigrum, (Jeter v. Hewitt, 22 How. 352, 364) but where application is made to collect judgments by process not contained in themselves and requiring, to be sustained, reference to the alleged cause of action upon which are founded, the aid of the Court should not be granted when upon the face of the record it appears, not that mere error supervened in the rendition of such judgments, but that they rest upon no cause of action whatever." (129 U. S. at page 505).

* * * * * *

"It appearing from the judgment records, or if not from relator's petition tha tthe bonds were issued under an abrogated statute and were consequently void, and that the respondents possessed no power to tax to pay them, because that power was given only by the statute which had ceased to exist."

In the instant case the power to tax was *denied* by the *Constitution of Texas, Article XVI, Section 59 (c),* requiring a vote of the property taxpaying voters authorizing the indebtedness. The officials of the District could be enjoined by a property owner from levying and collecting the tax which Petitioners sought to require the officials to levy and collect by their mandamus action.

CONCLUSION.

Petitioners apparently do not attack the ground for affirmance in the concurring opinion filed by Judge Sibley in which he states:

> "But the State of Texas, in the statute which authorized the issuance of the bonds, coupons from which were reduced to judgment, reserved the right to question the validity of bonds so issued, and was allowed to intervene for that purpose in this case. The State did pray for an injunction against enforcement of the judgment as a public debt. The State can so proceed, and did set aside a judgment about these very bonds in STATE vs. MILLER, 133 Tex. 498, 128 S. W. (2) 1012. The State was not a party to the present judgment and not bound by it. The plaintiff in judgment was no bona fide holder, but a party to a fraud by which the bonds were gotten from the district. The enforcement of the judgment ought, at the instance of the State, to have been enjoined, and the decree appealed from ought to be affirmed on this ground."

We respectfully submit that the District Court and the Circuit Court of Appeals correctly disposed of this case and that the writ of certiorari should be denied.

Respectfully submitted,

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